

the month in which death occurred shall be treated as payable to that veteran's surviving spouse, if the surviving spouse is not entitled to death compensation, dependency and indemnity compensation or death pension for that month and, if negotiated or deposited, shall be considered to be the benefit to which the surviving spouse is entitled under paragraph (c)(1) of this section. However, if such payment is in an amount less than the amount of the benefit under paragraph (c)(1) of this section, the unpaid difference shall be treated in the same manner as an accrued benefit under § 3.1000 of this part.

(Authority: 38 U.S.C. 5310(b))

[48 FR 34471, July 29, 1983, as amended at 62 FR 35422, July 1, 1997; 64 FR 30392, June 8, 1999]

### § 3.21 Monetary rates.

The rates of compensation, dependency and indemnity compensation for surviving spouses and children, and section 306 and old-law disability and death pension, are published in tabular form in appendix B of the Veterans Benefits Administration Manual M21-1 and are to be given the same force and effect as if published in the regulations (title 38, Code of Federal Regulations). The maximum annual rates of improved pension payable under Pub. L. 95-588 (92 Stat. 2497) are set forth in §§ 3.23 and 3.24. The monthly rates and annual income limitations applicable to parents' dependency and indemnity compensation are set forth in § 3.25.

[44 FR 45932, Aug. 6, 1979]

CROSS REFERENCES: Section 306 pension. See § 3.1(u). Old-law pension. See § 3.1(v). Improved pension. See § 3.1(w).

### § 3.22 Benefits at DIC rates in certain cases when death is not service connected.

(a) *Entitlement criteria.* Benefits authorized by section 1318 of title 38 U.S.C., shall be paid to a deceased veteran's surviving spouse (see § 3.54(c)(2)) or children in the same manner as if the veteran's death is service connected when the following conditions are met:

(1) The veteran's death was not caused by his or her own willful misconduct; and

(2) The veteran was in receipt of or for any reason (including receipt of military retired or retirement pay or correction of a rating after the veteran's death based on clear and unmistakable error) was not in receipt of but would have been entitled to receive compensation at the time of death for a service-connected disablement that either:

(i) Was continuously rated totally disabling by a schedular or unemployability rating for a period of 10 or more years immediately preceding death; or

(ii) Was continuously rated totally disabling by a schedular or unemployability rating from the date of the veteran's discharge or release from active duty for a period of not less than 5 years immediately preceding death.

(b) *Effect of judgment or settlement.* If a surviving spouse or child eligible for benefits under paragraph (a) of this section receives any money or property pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the death of the veteran, benefits payable under paragraph (a) of this section shall not be paid for any month following the month in which such money or property is received until the amount of benefits that would otherwise have been payable under paragraph (a) of this section equals the total of the amount of money received and the fair market value of the property received. The provisions of this paragraph do not apply, however, to any portion of such benefits payable for any period preceding the end of the month in which such money or property of value is received.

(Authority: 38 U.S.C. 501)

(c) *Social security and worker's compensation.* Benefits received under social security or worker's compensation are not subject to recoupment under paragraph (b) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(d) *Beneficiary's duty to report.* Any person entitled to benefits under paragraph (a) of this section shall promptly